

COMMITTEE ON LANDS AND BUILDINGS

March 6, 2007

4:00 PM

Chairman Thibault called the meeting to order.

The Clerk called the roll.

Present: Aldermen Thibault, Smith, Forest, Roy, Long
Aldermen Lopez, O'Neil

Messrs.: Deputy City Solicitor Arnold, Tom Bowen, Robert MacKenzie,
David Cornell

Chairman Thibault addressed item 3 of the agenda:

3. Communication from Thomas Bowen, Water Works Director, seeking final approval of a conservation easement on a 460-acre parcel of land in the Town of Auburn primarily for the protection of the Lake Massabesic watershed, and secondarily, as a means of reducing Manchester Water Works' annual payment in lieu of taxes to the Town of Auburn.

Alderman Roy moved to approve. Alderman Smith duly seconded the motion. There being none opposed, the motion carried.

Alderman Lopez stated I had a call this afternoon regarding this land. I think it's essential that it go before the Board tonight and I would hope the Committee would send it to the Board tonight.

Alderman Roy moved to report out to the Board of Mayor and Aldermen at this evening's meeting. Alderman Smith duly seconded the motion. There being none opposed, the motion carried.

TABLED ITEM

On motion of Alderman Forest, duly seconded by Alderman Smith, it was voted to remove item 4 from the table for discussion.

4. Communication from Robert MacKenzie, Director of Planning & Community Development, advising that in order to proceed with disposition of certain properties the City owns on Wellington Hill two actions are required:
 - a) determination of surplus to City needs; and
 - b) approval of an agreement with the Diocese on the manner of disposition and the division of proceeds.other actions required to include:
 - c) release and discharge of all paper streets; and
 - d) potential rezoning of the area.

(Note: update submitted by Robert MacKenzie dated March 1, 2007 enclosed.)
(Tabled 01/16/2007)

Deputy City Clerk Johnson noted an update dated March 2nd was submitted by the City Solicitor's office.

Chairman Thibault requested Mr. MacKenzie brief the Committee on some of the aspects.

Mr. Robert MacKenzie, Director of Planning and Community Development, stated some of the major changes were as a result of this Committee's comments. For example, the agreement specifically says that the zoning will be single-family, it will remain the same as it was, as it is now and the agreement also proposes that that be included in the deeds as well. So it would be guaranteed that it's single-family. One other item...there was some concern about some of the outlying properties. In this case most of the land is owned by the City and St. Joe's but there are a few other parcels...there was some concern about those would go along but basically the agreement includes all those property owners so they have to agree to this and the entire parcel would be sold as is.

Chairman Thibault asked are there any questions of the Committee.

Alderman Smith moved to determine surplus to City needs, approve the agreement forwarded March 2nd and also to recommend release and discharge or discontinuances may be appropriate of paper streets and potential rezoning if necessary.. Alderman Forest duly seconded the motion.

Alderman Long stated with respect to the paper streets that adds up to 9.1 acres, Bob..

Mr. MacKenzie stated yes it does.

Alderman Long asked is that 9.1 acres divided between the abutters or is that within these figures that we have the pro rate or interest numbers.

Mr. MacKenzie stated basically all of the property owners would get a piece of those paper streets. Typically if a paper street is gotten rid of each property owner gets up to the middle of it. So, all of us including the City and all the others would get portions of that 9 acres.

Alderman Long asked do we know what that breakdown is, by any chance do we know what the City gets, etc.

Mr. MacKenzie stated there's a percentage breakdown that's in the back of the agreement.

Alderman Long stated but the percentage breakdown of the paper streets...do we know of these 9 acres who will get the majority of it...was it the City, was it the parish.

Mr. MacKenzie stated each of us would get percentage as well of the paper streets. So, right now, that pro rata for the City I think is 37%, so the City would get 37% of the pro rata of the paper streets.

Alderman Long stated now the City is the Attorney in Fact and obtain such approvals, obtain all merger and rezoning approvals. Now, all mergers...are we assuming that those are just the City process mergers and not if a landowner wants to merge with somebody else for a different interest or what have you.

Mr. MacKenzie stated I understood it to be only those approvals that the City could grant like the Planning Board would have to grant a merger which is a fairly straight forward process so City officials would then submit it to the Planning Board for that merger.

Alderman Long stated so it's clear then that these mergers and rezoning approvals are what the City...would go through the City.

Mr. MacKenzie stated in my mind it was. The only other action that might be needed that would be separate would be a future buyer may want all those old paper streets to have Quiet Title...that is a proceeding that has to go to Superior Court. So, we would all cooperate and going to Superior Court to Quiet Title of those streets and that just makes sure that there's appropriate title records for that land...that's the only action...I don't think we would be the lead on that, however. We would jointly work on the Quiet Title.

Alderman Long stated the Purchase and Sales Agreement #3...the parenthesized statements...are there any of these other than representations warranties and so forth? Are we aware of those to date with any of the parties?

Mr. MacKenzie stated I would probably asked Attorney Callahan to join me to define whether that is true or whether Tom Arnold does that. Could you just refresh my memory which section of the agreement.

Alderman Long stated it's the Purchase and Sales Agreement...#3 which is entitled "Purchase and Sales Agreement"...in parenthesis...I don't have a page.

Mr. MacKenzie stated page 3, section 3 Purchase and Sales I do have that...and the question to be specific are you looking to see what type of representations, warranties or conditions.

Alderman Long asked do we know of any conditions that fit this now?

Attorney Dan Callahan of Devine, Millimet and we represent the Roman Catholic Bishop of Manchester and St. Joseph's Cathedral with regard to this matter. The parenthetical in paragraph 3 was intended if there were specific title issues with regard to any of the property. I am not aware of any at this point but what we wanted to do was to be general saying the usual standard conditions of title but there might be particular restrictions. As an example, there was highway takings for Interstate 93 out there adjacent to this...I think mostly roman Catholic Bishop of Manchester property but also some of the individual property owners so that there may be a reservation rights, there may be a slope or embankment would be specific to a particular piece of property.

Alderman Long stated that would be taken off the total.

Attorney Callahan stated that would be the condition that would be added to the purchase agreement for that particular lot so that whoever bought the merged lot or bought from all of us and just so the record is clear there are six property owners: Roman Catholic Bishop of Manchester for the benefit of St. Joseph's Cathedral, the City of Manchester and four individuals. We've been in contact with all four individuals, we're finalizing to make sure that they're all satisfied with the agreement and that but if there were a particular issue and a buyer was going to purchase this entire lot and there were an exception in one of the titles none of the six parties would be representing it or be liable if the buyer said well wait a minute I didn't know about this slope easement. So, it's a protection for the City, the Diocese and the other individual property owners.

Alderman Smith stated I just want to make sure of this because I opposed this the last time...the major change includes single-family, no rezoning right.

Mr. MacKenzie stated correct.

Alderman Smith stated thank you I have no opposition to this.

Attorney Callahan stated on the record, Alderman, just so we're clear and it came up is that the properties, the perimeter properties are in different zones but the agreement is that all of the property will be R-1A for those uses so that it's clear irrespective of what it is it will all be R-1A.

Alderman Smith stated Bob I guess you figured we'd net probably \$1 million in this possible agreement.

Mr. MacKenzie stated without getting into specifics on the assessed value I would think we should be getting close to that yes.

Alderman Roy asked Bob is there already a purchaser for this property?

Mr. MacKenzie replied not to my knowledge no.

Alderman Roy stated so it will be marketed.

Mr. MacKenzie stated yes I've had a few contacts from people and I've referred them to this group.

Alderman Roy stated I noticed under the broker section you have Michael Reed who is very well respected...has a listing price been set?

Attorney Callahan replied there hasn't been a listing price set as of yet. The agreement contemplates that the six parties will get together and agree on that the property has been appraised and we'll be working on that.

Alderman Roy stated it's nice to see this moving forward but again it is a major chunk of land in the City of Manchester. As we've done in the past we've moved to sell things and then heard from other boards whether it be School District that they have an interest. Has anyone reached out to the School District regarding the City part of the land?

Mr. MacKenzie replied no I have not specifically.

Alderman Roy stated I would like to see that done. I'm not going to hold this up because of that but as we found out on Karatzas Avenue right around the corner they threw a cog in the wheel at the eleventh hour and I'd hate to see that happen again within two years. So, if Bob you could take it upon yourself to just touch base with the School District, have them sign off and go from there that would be fantastic. The only other thing is under the "Retention of Emergency Access" Smyth Road is spelled with a "Y"...section 7.

Chairman O'Neil asked will we see this at the full Board tonight or the next meeting?

Alderman Smith moved to report out to the Board of Mayor and Aldermen at this evening's meeting. Alderman Forest duly seconded the motion. There being none opposed, the motion carried.

Alderman Forest stated I believe the City Solicitor and the Clerk want to say something before we vote on the motion.

Deputy City Clerk Johnson stated we would request that the Chairman of the Board of Assessors comes forward, we would ask to address a question to them.

Chairman Thibault asked do you have anything to add to this...what is the question to be asked of him?

Deputy City Clerk Johnson stated the Clerk and the Solicitor conferring here stated we don't have a report on record that recommends that an appraisal be accepted from an outside source...we are looking for that for the record because it's my understanding that the appraisals are going to be done on an outside basis.

Mr. David Cornell, Chairman of the Board of Assessors, stated we do have the appraisal of the property. We are in concurrence with those values.

Deputy City Clerk Johnson stated that places that on record and we will contain that in the report as well.

Alderman Roy stated a question of the Clerk...that appraisal is not public correct.

Deputy City Clerk Johnson replied no. I just needed something that indicated from them that they are agreeable to an outside appraisal for the record.

Alderman Roy stated I know you needed that report but the words the appraisal has been reviewed and I want to make sure that stays confidential.

Deputy City Clerk Johnson stated we have no knowledge of what that is and that is not part of the public record at this point.

Alderman Long stated the representation by the City as Attorney in Fact shall be at the City's sole expense. The Attorney in Fact will be the City Solicitor or will there be an attorney hired.

Attorney Callahan replied what it is intended to do is to the extent that applications or papers need to be filed much like a developer would get permission for the landowner to seek a variance or Planning Board approval. The City would not be acting as an attorney but just as the representative for all the parties so that we don't need six parties filing papers.

Alderman Long stated my question is more towards at the City's sole expense...I want to be sure that it's our Solicitor's office doing this and not that the City will be hiring...can we get verification on that.

Deputy City Solicitor Arnold stated that's certainly the present plan.

Chairman Thibault asked are there any other questions. There were none.

Deputy City Solicitor Arnold stated if I could just raise one additional concern. As has been noted the agreement provides that a named broker is to be retained to market the property. Since presumably the City would be doing that of course raises procurement code issues. I hadn't planned on dealing with them tonight but I heard some move to get it reported out to the Board tonight perhaps some acknowledgement by the Board that this could proceed outside of the procurement code whether by ordinance or other action.

Alderman Roy stated if it helps the Solicitor I'd be happy to make that motion and I may be wrong and he may correct me but my understanding was where the City is only part owner with other parties that we're allowed to go without a procurement code...we're only a partial owner here.

Deputy City Solicitor Arnold stated we're only a partial owner but under this agreement the City is going to be retaining the services. There are some additional issues that I think the Clerk will raise especially in respect to the surplus property determination.

Alderman Roy stated if need be to satisfy the Solicitor I'll make that motion.

Chairman Thibault stated I'd like to have Alderman Lopez speak on something.

Alderman Lopez stated all I wanted to find out from the Solicitor because this is the best interest of the City we bypass anything else on procurement, is that correct?

Deputy City Solicitor Arnold stated you can certainly do that I just wanted to acknowledge that there are procurement issues here that need to be dealt with.

Alderman Lopez stated I just wanted to clarify that answer that if it's in the best interest of the City we have that authority.

Deputy City Solicitor Arnold stated I believe so...the Board in whole has that authority.

Alderman Forest stated I'm getting away from things but I know right now I've heard three motions and we haven't voted on the first one that Alderman Smith and I made...could we do one motion at a time here so we know.

Chairman Thibault stated I have no problem with that. I was just hoping that everybody would be heard before we make the motion. Do I understand that if we make a motion here it goes to the full Board tonight.

Deputy City Clerk Johnson stated there are two others issues that have not been raised yet that I should bring to your attention regarding a surplus property ordinance and that is we don't have a Tax Collector's report and without that you really can't go forward to the Board because we also need to do ordinances for any of the parcels that were tax deeded parcels.

Chairman Thibault stated so it can't go to the Board tonight then.

Deputy City Clerk Johnson stated I guess what I'm asking is you can certainly take the action, make the recommendations that have been made out before you and approve any reports to be submitted by the Tax Collector and then at the next meeting perhaps we can have the paperwork already unless somebody has it all.

Alderman Smith stated I have here in the notes of January 16, 2007 from the Tax Collector's office no opposition to certain deeded parcel son Wellington Hill.

Deputy City Clerk Johnson stated she doesn't have any objection but we have to have ordinances prepared and readied for that to attach to the Committee report...generally speaking that's how that's done though I can submit it separately I

suppose and we can bring forward the report. Just so that you understand that the action you're taking is you're basically moving it forward, that there will be a lot more paperwork coming behind it at the next meeting.

Deputy City Solicitor Arnold stated as some of the Board members may be aware pursuant to state statute we have to dispose of tax deeded property by ordinance.

Chairman Thibault stated so I guess what we can do here tonight is vote this in, send it to the Board.

Deputy City Clerk Johnson stated if I'm understanding what the Committee needs to do is move on items a, b, c and d which has already been done by Alderman Smith, seconded by Alderman Forest. It is also my understanding that you're accepting the recommendation of the Board of Assessors to accept an outside appraisal as part of that motion and to accept the Tax Collector's report as part of that motion and direct the Clerk to submit other paperwork and we also have the procurement code issue and should that be included...that's my question...which would be an amendment to the motion.

Mr. MacKenzie stated if I may, Mr. Chairman, just to clarify with the Clerk so that we don't get too far down the line. Basically, item d is not included.

Deputy City Clerk Johnson stated they're saying potential rezoning as part of their recommendation in the event that it's needed for the R-1A as I understand it. You'd still have to come in with the petition for rezoning that isn't going to change the petition process...just to make them aware that in doing this action that if there is a zoning change requirement for some of that property to bring it all to the R-1A district that that is included in your recommendation. So, it becomes clear...three months from now when somebody brings in a petition and says wait a minute I don't remember this it was part of the report. I'm getting it all down at the same time as part of it.

Attorney Callahan stated one other point is in item b just so the record is clear there are four other individual property owners that are part of this agreement so it's not just an agreement with the Diocese and with the City but four other individual property owners and the amended form of agreement which the Clerk noted that you received earlier or late last week...those four parties are identified.

Deputy City Clerk Johnson stated we have that noted in that March 2nd communication that we're referring to so that's covered within the motion.

Alderman O'Neil stated out of fairness to these folks if you're not going to be able to or if the full Board is not going to be able to approve everything tonight are they going to hang around City Hall for the next three hours and then at the end of the day not everything can be approved anyway...is it better then to refer it to the next Board meeting and get this all worked out in between?

Chairman Thibault stated I believe it should be and get all these other items ironed out before we come back.

Deputy City Clerk Johnson stated the only items as I understand are two items that will not be completed as of right now would be the procurement code and the ordinances and the ordinances can follow...I don't see that as a major issue as part of the recommendations. It's the procurement code that may be the issue.

Chairman Thibault so why don't we leave it to the City Clerk to handle all of the things that need to happen before they bring it to the Board.

Alderman Smith asked how does this affect the Diocese and the City by waiting until the next Board meeting?

Mr. MacKenzie stated I personally don't have any issue with that. I'm not sure of any critical timetable that that would disrupt, I'm not sure if Attorney Callahan has any.

Attorney Callahan stated I don't think it does. It may require...it will...we were talking about the form of the agreement now with the dates for getting some of this approved, moving those dates and I guess I have a question as clarification if one of the other individual property owners had a question of clarification there will be one change so the record's clear that Mrs. Shirley Voss, Stanbro know Kingsbury so the agreement we changed to reflect what her current name is...Shirley F. Kingsbury...we would have some amendments to that agreement whether that would have to go back through this process or would the City be authorized to execute an agreement that has those types of amendments and we may change or request changes with the City and the other parties to extend the date by which the documents are finalized and the sale occurs. I think currently the agreement provides getting a Purchase and Sales Agreement by February 29, 2008...we probably want to put that to March 31, 2008 but other than those kinds of things there's no urgency for the Diocese or the Cathedral we just want to keep the process moving.

Chairman Thibault stated if there are any of those extenuating circumstances why couldn't we have Lands and Buildings meeting just prior to a Board meeting on that date whatever date that might be.

Deputy City Solicitor Arnold stated I believe that minor housekeeping changes like that we could just make in the draft of the agreement to be submitted to the Board at not tonight's meeting but at it's next meeting as long as the Committee is aware that there may be some minor changes and deadline dates specified.

Alderman Lopez stated I think sometimes we make things a little complicated... (a) if we're going to approve it let us approve it and let staff and the City Clerk's and the attorney take care of the necessary administrative paperwork that needs to be done. If they fail to do it then that's a different problem but if we're going to approve something I think we ought to move forward and approve it and let them take care of it.

Chairman Thibault asked can we approve it?

Alderman Roy stated I would just reiterate what Alderman Lopez is saying that there are going to be minor housekeeping issues throughout the length of this deal, they have a broker in mind, they have a marketing plan, this is the best time to get rallying in on the market, let's move forward, get a consensus of the full Board tonight and then we can catch up with the paperwork afterwards. But a lot of time and energy on the Diocese and the City part has gone into this and I think if we keep delaying it two weeks at a stretch all we're doing is hurting ourselves and the purchase price.

Alderman O'Neil asked will we be able to get the qualifications of the broker before tonight's meeting...I'm only kidding, he's very well qualified.

Deputy City Clerk Johnson stated speaking of housekeeping in terms of a motion as I understand it will it include also any issues with regards to the procurement code...whatever language we can come up with in short timing is that included Alderman Smith?

Alderman Smith replied yes that's alright. All I'm interested in is to make sure that single-family will remain.

Deputy City Clerk Johnson stated we're putting that in there for you.

Chairman Thibault asked are we still going with Aldermen Smith and Forest's motion.

Deputy City Clerk Johnson replied yes we are.

Chairman Thibault called for a vote on the motion. There being none opposed, the motion carried.

Deputy City Clerk Johnson stated just to clarify it's the Committee's intent that we bring a report forward this evening, okay.

OTHER BUSINESS

Alderman Lopez stated I'll yield to Alderman Smith as I believe he knows what I want to bring up.

Alderman Smith stated first of all I have several things I'd like to bring up. The first thing is I'd like to as the City Solicitor...he's got his documents regarding Tires, Inc. to get those documents to the parties...it's been over a month now.

Deputy City Solicitor Arnold stated I realize, Alderman, I'm getting to them as fast as I can. I realize that's an issue.

Alderman Thibault stated thank you. The other is regarding Bass Island. I would like to ask Bob MacKenzie to give us an explanation of where we are because it's very, very much a concern to myself and Mr. Netsch, Mr. O'Neil, Mr. Lopez regarding where we are, what the amounts are...I've heard all kinds. I've got a new piece of paper from last week and I'd like to know where we stand right now in regard to the money that was allocated, the disposition or demolition of the building and so forth...what is the status of Bass Island.

Mr. MacKenzie stated I will give you part of the status. I know that both the Assessor's and the Solicitor's office has been working hard on this matter and I just recently...a few minutes ago spoke with Mr. Cornell, Chairman of the Assessors and they have completed an appraisal. I would prefer that they speak for themselves on the price issue and if they're still here...they are...because I'm not sure if this has been released publicly at all so I would prefer David talk about that and on the issue of where the money would come from. There is a portion of money that is a NHDOT reimbursement that we can utilize for this. If the price tag is higher than that though I have been speaking with both the federal government and the state DES, I think we've reached some possible agreement on how we can work that out but again that depends on the purchase price. So, I would like David to speak on that.

Mr. Cornell stated we have completed an appraisal on the property. Typically before we release those figures we go into non-public session for negotiating for the City so I would assume this time would probably be no different.

On motion of Alderman Smith, duly seconded by Alderman Roy, it was unanimously voted on a roll call vote to enter non-public session under the provisions of RSA 91-A:3II(d) relating to acquisition of property.

Present in executive session were members of the Committee, Robert MacKenzie, Thomas Arnold, David Cornell, the City's commercial appraiser and the Deputy City Clerk. Matters discussed were confined to price, value and process relating to potential purchase of real estate in the Bass Island area inclusive of variables, such as environmental mitigation and potential building removal.

On motion of Alderman Forest, duly seconded by Alderman Roy, it was voted to re-enter public session.

On motion of Alderman Roy, duly seconded by Alderman Smith, it was voted to request Robert MacKenzie to work with other City staff and negotiate a purchase and sales agreement to be presented to the Board of Mayor and Aldermen on March 20, 2007.

There being no further business to come before the Committee, on motion of Alderman Forest, duly seconded by Alderman Smith, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee